

SUPREME COURT OF MONTANA

Harding v. Savoy, 2004 MT 280

100 P.3d 976, 323 Mont. 261 (2004) · No. 02-521 · Decided October 14, 2004

SUMMARY

The Montana Supreme Court affirmed a judgment quieting title in favor of the Harding and Skogen plaintiffs and awarding treble damages for forcible detainer. The court upheld findings concerning possession, damages, a prescriptive easement, and the movement of the Sun River by accretion and avulsion. It also affirmed the denial of attorney fees.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Patricia O. Cotter; W. William Leaphart; John Warner; James C. Nelson; Jim Regnier
JURISDICTION	Montana
DECIDED	October 14, 2004
DOCKET	02-521
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal and cross-appeal from findings of fact and conclusions of law entered after a ten-day bench trial in consolidated quiet-title and forcible-detainer actions.
STANDARD OF REVIEW	Findings of fact following a bench trial are reviewed for clear error; conclusions of law are reviewed for correctness. A damage determination is reviewed as a factual finding and upheld if supported by substantial evidence. A ruling granting or denying attorney fees is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; binding precedent in Montana.
PARTIES	Barbara B. Savoy, Bob Murray, Jr. v. Warren G. Harding, Grace Harding, Orville E. Skogen, Arlene F. Skogen

TOPICS

- quiet title
- ejectment
- prescriptive easements
- damages
- appellate procedure

PRACTICE AREAS

real estate

property litigation

land use

civil remedies

appellate procedure

QUESTIONS PRESENTED

1. Whether the District Court erred in awarding treble damages for forcible detainer.
2. Whether the District Court applied the proper measure of damages and whether the damages awarded were supported by the evidence.
3. Whether the District Court erred in finding a prescriptive easement in favor of the Skogens across Murray's Lot 13.
4. Whether the District Court erred in determining the effects of accretion and avulsion on the disputed Sun River property boundaries.
5. Whether the District Court erred in denying the Hardings' and Skogens' claims for attorney fees.

HOLDINGS

1. Mere wrongful occupation alone is insufficient to establish forcible detainer, but whether the circumstances or actions by which a person unlawfully holds and keeps possession constitute force, menaces, or threats of violence is a question for the fact finder. The evidence supported the District Court's finding that Savoy used sufficient force and actually possessed the disputed land, so treble damages were authorized.
2. When judgment is based on forcible detainer, the damages provision in § 70-27-205, MCA, rather than the general wrongful-occupation measure in § 27-1-318, MCA, governs. Damages that are the natural and proximate consequences of forcible detainer, including lost profits, emotional-distress damages, and incidental damages, may be recovered when supported by the evidence. The awards were supported by substantial evidence.
3. The Skogens established a prescriptive easement by clear and convincing evidence. The required elements are open, notorious, continuous, uninterrupted, exclusive, and adverse use for five years, and the trial court correctly found those elements satisfied.
4. Accretion gradually changes the property boundary with the water line, while avulsion does not change the property boundary. Because the river moved south by accretion after the 1906 survey and then north by avulsion in 1916, the District Court correctly determined the Harding-Savoy boundary. The 1948 avulsion in the Island area likewise left the Skogen-Murray boundary unchanged.
5. The District Court did not abuse its discretion in denying attorney fees. Absent a contractual or statutory basis, Montana generally follows the American Rule, and the equitable exception for a party forced to defend against a wholly frivolous or malicious action generally does not authorize fees for plaintiffs who initiated the litigation. The Court declined to adopt the requested bad-faith-defense exception.

KEY QUOTATIONS

"Possession" is defined as: "4. Actual holding or occupancy with or without rightful ownership." (¶ 35)

“To establish an easement by prescription, a claimant must establish open, notorious, continuous, uninterrupted, exclusive and adverse use of an easement for five years before the commencement of the action.” (¶ 53)

““Avulsion” occurs when a river suddenly changes its channel to form a new one.” (¶ 60)

““Accretion” occurs when a river gradually and imperceptibly changes its course over a period of time, resulting in sedimentary deposits on one bank along the water line.” (¶ 60)

FACTUAL BACKGROUND

The Hardings and their predecessors owned and possessed the Oxbow property for decades and used it for cattle grazing until Savoy destroyed their fence, erected a replacement fence, and interfered with access to water and grazing areas. The Skogens owned and continuously possessed the Island property and used a road across Murray's Lot 13 for the statutory period. Savoy and Murray asserted competing claims based on surveys and the historic movement of the Sun River. The trial court found forcible detainer, awarded treble damages, recognized the Skogens' prescriptive easement, and determined that accretion moved one boundary while later avulsions did not alter the relevant property boundaries.

PROCEDURAL HISTORY

The Hardings and Skogens filed separate quiet-title and forcible-detainer actions in 1999 and 2000. The actions were consolidated by stipulation, and the Eighth Judicial District Court for Cascade County quieted title in favor of the plaintiffs, awarded treble forcible-detainer damages, established a prescriptive easement for the Skogens, determined the effect of avulsion and accretion on the disputed boundaries, and denied attorney fees. Savoy and Murray appealed, and the Hardings and Skogens cross-appealed the denial of fees. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- John Mohr & Sons, Inc. v. Jahnke, 55 Wis. 2d 402, 198 N.W.2d 363 (1972)
- State, Department of Livestock v. Sand Hills Beef, 196 Mont. 77, 639 P.2d 480 (1981)
- Shipman v. Todd, 131 Mont. 365, 310 P.2d 300 (1957)
- Shubat v. Glacier County, 93 Mont. 160, 18 P.2d 614 (1932)
- El Paso Refining, Inc. v. Scurlock Permian Corp., 77 S.W.3d 374 (Tex. App. 2002)
- Grenfell v. Anderson, 2002 MT 225, 311 Mont. 385, 56 P.3d 326
- Tungsten Holdings, Inc. v. Olson, 2002 MT 158, 310 Mont. 374, 50 P.3d 1086
- Sherner v. Conoco, Inc., 2000 MT 50, 298 Mont. 401, 995 P.2d 990
- Westlake v. Osborne, 230 Mont. 364, 750 P.2d 444 (1988)
- San Francisco & Suburban Home Building Society v. Leonard, 17 Cal. App. 254, 119 P. 405 (1911)

- *Semenza v. Bowman*, 268 Mont. 118, 885 P.2d 451 (1994)
- *Keily Construction L.L.C. v. City of Red Lodge*, 2002 MT 241, 312 Mont. 52, 57 P.3d 836
- *Maloney v. Home and Investment Center, Inc.*, 2000 MT 34, 298 Mont. 213, 994 P.2d 1124
- *Wareing v. Schreckendgust*, 280 Mont. 196, 930 P.2d 37 (1996)
- *Albert v. Hastetter*, 2002 MT 123, 310 Mont. 82, 48 P.3d 749
- *Renner v. Nemitz*, 2001 MT 202, 306 Mont. 292, 33 P.3d 255
- *Warnack v. Coneen Family Trust*, 278 Mont. 80, 923 P.2d 1087 (1996)
- *Lemont Land Corp. v. Rogers*, 269 Mont. 180, 887 P.2d 724 (1994)
- *Mountain View Cemetery v. Granger*, 175 Mont. 351, 574 P.2d 254 (1978)
- *Montana Department of State Lands v. Armstrong*, 251 Mont. 235, 824 P.2d 255 (1992)
- *Foy v. Anderson*, 176 Mont. 507, 580 P.2d 114 (1978)
- *Langemeier v. Kuehl*, 2001 MT 306, 307 Mont. 499, 40 P.3d 343
- *Nason v. Leistiko*, 1998 MT 217, 290 Mont. 460, 963 P.2d 1279
- *Trustees of Indiana University v. Buxbaum*, 2003 MT 97, 315 Mont. 210, 69 P.3d 663
- *Pankratz Farms, Inc. v. Pankratz*, 2004 MT 180, 322 Mont. 133, 95 P.3d 671
- *Erker v. Kester*, 1999 MT 231, 296 Mont. 123, 988 P.2d 1221
- *Montana West Farm Bureau Mutual Insurance Co. v. Hall*, 2001 MT 314, 308 Mont. 29, 38 P.3d 825
- *Montanans for the Responsible Use of the School Trust v. State ex rel. Board of Land Commissioners*, 1999 MT 263, 296 Mont. 402, 989 P.2d 800
- *Goodover v. Lindey's*, 255 Mont. 430, 843 P.2d 765 (1992)
- *Youderian Construction v. Hall*, 285 Mont. 1, 945 P.2d 909 (1997)